

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR**

TUESDAY, THE 6TH FEBRUARY 2007 / 17TH MAGHA 1928

CRL.A.No. 1994 of 2006()

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SC.528/2002 of II ADDL.SESIONS COURT, KOLLAM
CP.150/2000 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOLLAM
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APPELLANT: ACCUSED:

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SOMAN, S/O. VELU,
SANTHOSH BHAVAN, AYATHIL CHERIYIL,
VADAKKEVILA VILLAGE, KOLLAM DISTRICT.**

**BY ADV. SRI.S.D.ASOKAN
SRI.M.GEORGE THOMAS**

RESPONDENT: COMPLAINANT:

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STATE OF KERALA, REPRESENTED BY
THE CIRCLE INSPECTOR OF POLICE,
KOLLAM EAST POLICE STATION, THROUGH
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

BY PUBLIC PROSECUTOR SARI. K.C. SANTHOSH KUMAR

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 06/02/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

J.B. KOSHY and T.R.RAMACHANDRAN NAIR, JJ.

Crl. Appeal No. 1994 of 2006

Dated this the 6th day of February, 2007

Judgment

Koshy, J.

Appellant was convicted and sentenced for offences punishable under sections 302 and 498 (A) of the Indian Penal Code for murdering his wife by causing burn injuries and also subjecting her to physical and mental cruelty and harassment. The allegation of the prosecution was that the accused married the deceased Sudharma about 23 years ago. Suspecting the fidelity of Sudharma, accused subjected to physical and mental cruelty on her. The accused poured kerosene on her body at 3.30 p.m. on 26.8.199 in the western room of Santhosh Bhavanam and set her ablaze. On account of the burn injuries sustained, Sudharma died at 6.50 a.m. on 29.8.1999 at District Hospital, Kollam. The accused married Sudharma 23 years before the incident and the deceased died of burn injuries are not disputed. PW1, brother of Sudharma, gave Ext.P1 first information statement. He deposed that there are three children in the wedlock of accused and Sudharma. They were living a peaceful married life till accused went to Gulf countries

for employment. Ever since the accused returned from Gulf, he became suspicious regarding the fidelity of Sudharma and used to manhandle her and subjected her to cruelty. He had also given evidence that the accused had threatened to do away with Sudharma on an earlier occasion also. Prior to the incident which led to the death of Sudharma, the accused and his son Santhosh (PW6) had left Sudharma at the house of her brother at Chathannoor. According to PW1, two days prior to the incident, PW6 took her from brother's house to 'Santhosh Bhavanam' where the accused and family were residing. On 26.8.1999 by about 5.30 p.m. PW1 received information that his sister Sudharma is admitted in the District Hospital, Kollam where he saw Sudharma who had sustained injuries all over her body. Therefore, he enquired with Sudharma regarding the manner in which she sustained the injury. According to him, Sudharma informed him that the accused had set her ablaze after pouring kerosene. Immediately, he went to the police station where Ext.P1 statement was recorded. In Ext.P1 first information statement he, however, stated that when he came to the hospital, Sudharma was unconscious. Apart from the above, his deposition is on the same lines as in Ext.P1.

He reached the hospital directly after getting information at 5.30 p.m. We are of the opinion that the statement that while PW1 came to the hospital, the deceased may not be in a position to give a dying declaration and it is only an exaggeration.

2. Deceased was examined by PW14 Dr. Binod who was the Assistant Surgeon working at the casualty at the District Hospital, Kollam. She stated that the patient was conscious and she told him that she was set at fire by her husband at their residence.

Ext.P3 is the wound certificate. The accused was also brought to the hospital with burn injuries. PW14 also examined the accused and the cause of injury as stated by the accused was on account of the spreading of fire while lighting stove at own house.

Photostat copy of the relevant page pertaining to the wound certificate of accused is marked as Ext.X1 (a) and the above page from Ext.X1 register was separately marked as Ext.X1 (b). Case sheet pertaining to the accused is marked as Ext.X2 series. According to PW12 who treated the accused, the

accused has sustained 10% burn and was discharged from the hospital on 26.9.1999.

3. PWs 2 and 3 neighbours were examined. They were declared hostile. PW3, though declared hostile, deposed that there was Onam celebrations near Karithara temple premises near to his residence and he along with PWs 2 and 4 went to attend the above celebration and it was on that day the wife of the accused sustained burn injuries. PW4, even though denied having any acquaintance with the accused or the deceased, it is stated that he saw a lady with burn injuries on 26.8.1999. According to him, the incident was in the afternoon in the courtyard of the residential building and the lady who sustained burn injuries was crying for help and himself and other persons, who came to witness the Onam celebration, took her to the hospital in a tempo trucker. Even though he was declared hostile, he deposed that while she was taken to the hospital, she was crying due to pain. According to PW5, she pretended ignorance of the incident and deposed that she later understood that wife of the accused expired due to burn injuries sustained from the stove. She also deposed that the incident took place during the Onam season and on the

date of incident, Onam celebration was going on at Karithara temple premises and in the house only accused, deceased and two sons were residing. It has come out in evidence that the eldest daughter of the accused was married away. Another important witness was PW6, son of the accused and deceased. He deposed that his mother sustained burn injuries on 26.8.1999 at about 3.00 p.m. She expired at about 6.00 a.m. on 29.8.1999 while undergoing treatment at the District Hospital, Kollam. He also deposed that his mother sustained burn injuries and his father was outside the house at that time. In the effort to save his mother, his father also sustained burn injuries on the hand. According to him, he was outside the house and on hearing the cry of his mother, he rushed to the house and by that time his father also came there and stripped the maxi worn by his mother and doused the fire. Even though he enquired as to what was happened, she fell down. He was declared hostile as he was trying to help his father.

4. PW10 Dr. Viji S. Pillai was examined by the prosecution that Sudharma was being manhandled by the accused even on previous occasions and had to undergo treatment on account of the above brutalities of the

accused. She deposed that at 4.30 p.m. on 11.4.1999 she examined Sudharma and residential address was noted as 'Santhosh Bhavan', Kollam and issued Ext.P2 wound certificate. She was brought to the hospital by her mother-in-law Lakshmi and seven injuries were noted on the body of Sudharma who had stated the cause of injury as hit by fencing stake and brick and kick with leg by her husband. At that time, the patient was also having bleeding from her right ear.

5. Ext.P4 postmortem certificate was issued by PW11 doctor. It shows that she died by burn injuries. PW12 doctor also produced various treatment certificates and documents kept in the hospital. Even in the inquest report, name of the accused was mentioned. Apart from Ext.P1 first information statement, prosecution evidence is mainly on the evidence regarding the motive and dying declaration. PW1 deposed that ever since the accused came from Gulf countries after employment, she was treated cruelly and she was assaulted and, finally, before the incident, PW6 sent her away to her brother's house and thereafter she was living with her brothers including PW1 and she was taken back to the marital house, 'Santhosh Bhavanam' only prior to the incident.

Evidence of PW1 that Sudharma was treated brutally ever since the accused came from Gulf countries is supported by the evidence of PW10 who gave evidence that earlier also she was admitted in the hospital with seven injuries and he stated that Sudharma stated the cause of injury as hit by fencing stake and brick and kick with leg by her husband. Further, even PW6 also admitted that Sudharma was called back from the brother's house, but, according to PW6 he was not aware she had gone on her own and the presence of the accused near the place of occurrence is not disputed.

6. Now, the whole question is whether the motive is proved and the dying declaration can be believed. Prior incident of brutality by the accused on the deceased is also proved. It is true that dying declaration can be accepted as sole evidence provided it is trustworthy. The deceased might have occasion to see the accused and opportunity to identify the accused and she was medically fit to make the declaration with proper understanding and the dying declaration is not given due to tutoring. Admittedly, relatives of the deceased came late. There was nobody to tutor the deceased against the accused. In fact, she was taken by PW4 and other

neighbours of the accused who were declared hostile. So, there is no possibility for any tutoring. Hostile witnesses have stated that she was trying for help and there is nothing to disbelieve the doctor who recorded the cause of injury as stated by the deceased. The above statement was made immediately on admission before giving any pain killer or starting the treatment. After going through the evidence, as a whole, we are satisfied that this statement stated to the doctor can be accepted as dying declaration. Further, dying declaration of wife is corroborated against the accused by the wound certificate of the accused, namely, page 285 of Ext.X1 wound certificate register. He did not say at the time while recording the wound certificate that he sustained burn injuries while trying to save his wife, but, according to the accused, he sustained burn injuries accidentally while lighting the stove. Of course, it must be true that in the process of setting fire the deceased or after the fire incident, he also tried to help the crying wife, but, in the same incident, he also got burn injuries. The explanation made by the deceased to the doctor also adds strength to the dying declaration. Totality of evidence would prove that cause of injury stated by the deceased to the doctor can be taken as

creditworthy. It is true that in the wound certificate it is stated that she has suffered more than 80% burns, but, she died only on the next day morning. Postmortem certificate shows that burn injury was 70%, but, at the same time, before treatment, immediately when she was brought to the hospital, she gave the cause of injury. We see nothing to disbelieve the dying declaration or reasoning of the court below. The contention that since husband has tried to save her after the incident, a lesser punishment could be imposed also cannot be accepted as the lesser punishment for offence under section 302 is life imprisonment. Earlier incidents regarding cruelty by the husband also stand proved and there is no reason for interfering in the punishment imposed under section 498(A) IPC and in any event, sentence is to run concurrently. We see no ground to interfere in the appeal and the appeal is dismissed.

J.B.KOSHY
JUDGE

T.R.RAMACHANDRAN NAIR
JUDGE

vaa

**J.B. KOSHY AND
T.R.RAMACHANDRAN NAIR, JJ.**

Crl. Appeal No.1994/2006

Judgment

Dated:6th February, 2007